

§ 4.252

payment of all remaining claims, referred to as general claims.

(d) The administrative law judge has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(1) If a claim is reduced, the administrative law judge will order payment only of the reduced amount.

(2) An administrative law judge may reduce or disallow both priority claims and general claims.

(e) If there is not enough money in the IIM account to pay all claims, the administrative law judge will order payment of allowed priority claims first, either in the order identified in paragraph (b) of this section or on a pro rata (reduced) basis.

(f) If less than \$1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.

(g) The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

(h) Interest or penalties charged against either priority or general claims after the date of death will not be paid.

[66 FR 32889, June 18, 2001; 66 FR 33740, June 28, 2001]

§ 4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

WILLS

§ 4.260 Making; review as to form; revocation.

(a) An Indian of the age of 18 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing

43 CFR Subtitle A (10–1–01 Edition)

and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits the same to the Superintendent of the Agency, the Superintendent shall forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will or codicil or any replacement or copy thereof may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will shall be held in absolute confidence, and no person other than the testator shall admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart shall be deemed to be revoked by operation of the law of any State.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 21284, Nov. 5, 1971; 36 FR 24813, Dec. 23, 1971; 53 FR 48648, Dec. 2, 1988]

§ 4.261 Anti-lapse provisions.

When an Indian testator devises or bequeaths trust property to any of his grandparents or to the lineal descendant of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood.

[54 FR 8329, Feb. 28, 1989]

§ 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, shall take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation shall vest and

Office of the Secretary, Interior

§ 4.273

be determined as if the person convicted never existed, notwithstanding § 4.261.

CUSTODY AND DISTRIBUTION OF ESTATES

§ 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all tangible trust personal property of a deceased Indian, and he or she may take such action, including sale thereof, as in his or her judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in 25 CFR 15.311 or in §§ 4.240, 4.241, or 4.312. All expenses, including expenses of roundup, branding, care, and feeding of livestock, are chargeable against the estate and may be paid from those funds of the deceased that are under the Department's control, or from the proceeds of a sale of the property or a part thereof. If an administrative law judge or BIA deciding official has been assigned to adjudicate the estate, his or her approval is required prior to such payment.

[66 FR 32890, June 18, 2001; 66 FR 33740, June 25, 2001]

§ 4.271 Omitted property.

(a) When, subsequent to the issuance of a decision under § 4.240 or § 4.312, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the administrative law judge's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner of the Bureau of Indian Affairs shall notify the administrative law judge who shall proceed to hold hearings if necessary and shall issue a decision under § 4.240. The record of any such proceeding shall be lodged with

the title plant designated under § 4.236(b).

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971, as amended at 55 FR 43133, Oct. 26, 1990. Redesignated at 66 FR 32890, June 18, 2001]

§ 4.272 Improperly included property.

(a) When subsequent to a decision under § 4.240 or § 4.312, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. A petition for modification may be filed by the Superintendent of the Agency where the property is located, or by any party in interest.

(b) The administrative law judge shall review the record of the title upon which the modification is to be based, and enter an appropriate decision. If the decision is entered without a hearing, the administrative law judge shall give notice of his action to all parties whose rights are adversely affected allowing them 60 days in which to show cause why the decision should not then become final.

(c) Where appropriate the administrative law judge may conduct a hearing at any stage of the modification proceeding. Any such hearing shall be scheduled and conducted in accordance with the rules of this subpart. The administrative law judge shall enter a final decision based on his findings, modifying or refusing to modify the property inventory and his decision shall become final at the end of 60 days from the date it is mailed unless a notice of appeal is filed by an aggrieved party within such period. Notice of entry of the decision shall be given in accordance with § 4.240(b).

(d) A party aggrieved by the administrative law judge's decision may appeal to the Board pursuant to the procedures in §§ 4.310 through 4.323.

(e) The record of all proceedings shall be lodged with the title plant designated under § 4.236(b).

[36 FR 24814, Dec. 23, 1971, as amended at 55 FR 43133, Oct. 26, 1990. Redesignated at 66 FR 32890, June 18, 2001]

§ 4.273 Distribution of estates.

(a) Unless the Superintendent has received a copy of a petition for rehearing filed pursuant to the requirements